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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,605	03/30/2004	Gunther Schiller	SCHILLER - 1	4379
25889	7590	03/27/2006	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				DANIELS, MATTHEW J
ART UNIT		PAPER NUMBER		
				1732

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/813,605	SCHILLER, GUNTHER
	<b>Examiner</b>	<b>Art Unit</b>
	Matthew J. Daniels	1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 January 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17, 19 and 20 is/are pending in the application.
  - 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-17, 19 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/11/06</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. The restriction requirement set forth previously was not addressed, however, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. **Claim 15** is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of copending Application No. 10/813,585 in view of Haddy (USPN 4690631). Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

The language of Claim 15 of the instant application and Claim 14 of the '585 application appears to be the same except for the presence of a turntable in the instant application. The '585 lacks a turntable. However, turntables are known and obvious in the art of forming concrete pipes, and this aspect is taught by Haddy (Fig. 1, Item 16). It would have been prima facie

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obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Haddy into the '585 application in order to provide a safe and efficient method for moving concrete pipes between stations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

3. The rejection set forth previously under this section is withdrawn in view of the cancellation of Claim 18.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 15, 16, 19, 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ottmann (USPN 4041118) in view of Haddy (USPN 4690631). In Claim 15, the "means" language of the claim is not interpreted as having invoked 35 USC 112, sixth paragraph, because part (A) of the three-prong analysis set forth in MPEP 2181(I) is not met. **As to Claim 15**, Ottmann teaches a method for the production of a multi-layer concrete pipe, comprising the following steps:

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pivoting a mold mantle, which stands essentially vertically, into a stand (Fig. 1, Items 10 and 12);

filling the mold mantle with first concrete mixture by means of a first charging system (Fig. 1, Item 22);

distributing and compacting the concrete mixture in the mold mantle by means of a rotating and vertically displaceable compacting tool (Fig. 1, Items 20, 18, 16, 24);

pivoting the mold mantle, which stands essentially vertically, out of the stand and removing the concrete pipe from the mold (inherent in Ottmann's method);

wherein before the concrete pipe is removed from the mold, a second concrete mixture filled into the mold mantle, said mold mantle standing essentially vertically, and a diameter of the compacting tool for distributing and compacting the second concrete mixture is reversibly reduced (3:22-45).

Ottmann is silent to a turntable. However, this aspect is known in the art and is taught by Haddy (Fig. 1, Item 16). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Haddy into that of Ottmann in order to provide a more efficient and safer method for moving the filled mold between stations than Ottmann's overhead crane (Fig. 4, Item 50). **As to Claim 16**, in the method of Ottmann, before the second concrete mixture is filled into the mold mantle and distributed, the first compacting tool (Fig. 1, Items 16 and 18) is exchanged for a second compacting tool (Fig. 4, Item 28).

Although silent to a "quick-change" device, the Examiner's position is that this is an apparatus limitation which does not materially affect the claimed method for producing a multilayer pipe (Claim 15). Additionally, Ottmann's clips and lift are interpreted to be a quick-change method

for switching tools (Fig. 3, Item 48 and Fig. 4, Item 50). **As to Claim 19**, in Ottmann's method the mold mantle is moved from a first to second stand (See Figs. 1-4). Changing stands by pivoting would have been *prima facie* obvious over Haddy's teaching of a turntable, because moving the filled mold by Haddy's method would have been obviously preferable to Ottmann's crane. **As to Claim 20**, Ottmann teaches movement from a first stand to a second stand before curing of the first layer (3:40-45). The particular configurations of the turntables in this case does not materially affect the method of making. However, Haddy teaches that such turntables are known, and it would have been obvious to move pipes using such turntables to the various processing stations of Ottmann.

5. **Claim 17** is rejected under 35 U.S.C. 103(a) as being unpatentable over Ottmann (USPN 4041118) in view of Haddy (USPN 4690631), and further in view of Kern (USPN 5051223). Ottman and Haddy teach the subject matter of Claim 16 above under 35 USC 103(a). **As to Claim 17**, Ottmann further teaches applying a first and second concrete mixtures to achieve an excellent internal finish (3:22-45). Ottmann and Haddy are silent to the claimed configuration. However, Kern teaches applying a first concrete (Fig. 1, dotted portion) and second mixture (See Fig. 1, Items 10, 12, 11, and 13) at essentially the same time from first and second charging systems (inherent in Kern's method), the second being applied through the shaft on which the compacting tools are mounted (See Fig. 1, Items 10, 12, 11, and 13). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Kern into that of Ottmann and Haddy in order to save time by avoiding multiple passes for finishing and subsequent sealing.

***Response to Arguments***

6. Applicant's arguments filed 11 January 2006 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

- a) Claim 15 of the present application differs from Claim 14 of the parallel application because in the present case two different layers of the pipe are formed by two different compacting tools. In the parallel case, the same compacting tool is used to form both layers.
- b) Ottmann teaches a single layer concrete pipe using two steps of inserting the same concrete mixture, and does not form a multilayer.
- c) There is no teaching of two different tools to create a pipe

7. These arguments are not persuasive for the following reasons:

- a) The Applicant's arguments indicate that the applications are distinct because of the use of a single tool used twice, or two tools each being used once. However, these limitations are drawn only to the apparatuses used, and do not distinguish the stepwise process limitations of the two claimed *methods*. The Examiner submits that this difference, by itself, is not sufficient to distinguish the two applications from being obvious over one another. It is additionally noted that the claims cited in the rejection only distinguish the number of tools, but do not distinguish the tools by their functions.
- b) The Applicant's claim does not require that the first and second mixtures are different, and therefore first and second applications of Ottmann's mix render the claimed subject to the mixes *prima facie* obvious. Additionally, the Applicant's arguments appear to assert that a first and

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second application of Ottmann's mix produce a single layer (page 9, fifth line from bottom).

However, the Applicant's remarks do not appear to consider Ottmann's teaching at 3:3-32, and in particular, Ottmann's teaching of the vibrating (3:5). This vibrating, which is performed *between the first and second applications of mix*, compacts the first layer, eliminates voids, and relieves residual stresses in that layer. While the Applicant's remarks appear to assume that no strata, or multilayers, are present in the pipe of Ottmann, the Examiner's position is that *because Ottmann clearly teaches that there is a structural change in the first layer applied due to the vibration treatment of the pipe, and because Ottmann further teaches that the second layer of mix does not undergo such vibration, that there would obviously be stratification in Ottmann's pipe*. Additionally, Ottmann's movement back and forth to the vibration station clearly was not instantaneous. Because some degree of curing would obviously have occurred during the movement and vibration, the Examiner submits that the second layer would have obviously behaved differently during the application process than the first layer, further distinguishing and stratifying the two layers applied in Ottmann's process.

Additionally, Ottmann clearly teaches that the second mix is applied to produce an excellent finish (3:44) and fill voids. The Examiner submits that the ordinary artisan would have found suggestion, and it would have been *prima facie* obvious, to vary the characteristics of the mix, such as aggregate size, to achieve these objectives. No particular details about any compositional differences between the layers have been claimed.

c) The number of charging or smoothing tools claimed in producing the pipe would not distinguish the method from the prior art when the function and purpose of the claimed tools are each individually the same as the tool of Ottmann.

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 7:30 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJD 3/16/06

*MJD*

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